

## 1 Proceedings

2 Avery and Israel Rosado, miscellaneous reports,  
3 such as latent fingerprints report, a comparison  
4 latent prints report, hair and fiber report, EMS  
5 reports belonging to a Paul Avery and Abraham  
6 Pollack, ballistics reports, a Crime Scene report  
7 and the wrap sheets or criminal records of Edwin  
8 Oliva, Adrian Diaz, Angel Santos and Paul Avery,  
9 the witnesses who we expect to call and who have in  
10 fact criminal records.

11 Judge, you know, I just may have misspoken.  
12 The actual tapes themselves are not here. What I  
13 have are the transcripts. The tapes are being  
14 copied and I will have those later.

15 THE COURT: You have the transcripts?

16 MR. HARRISON: The transcripts will be  
17 accurate in my defense.

18 (Handing.)

19 THE COURT: So your lunch hour will not be  
20 wasted. You will have something to do. If I may,  
21 one minute? The tapes you will receive sometime  
22 this morning.

23 MR. HARRISON: It's understood, Your Honor.  
24 The only question I have, so I am clear -- here is  
25 a signed copy of the receipt acknowledged.

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2 MR. VECCHIONE: Thank you.

3 (Handing.)

4 MR. HARRISON: (Continuing) The question I  
5 have is the cooperation agreement.

6 THE COURT: If there is one.

7 MR. VECCHIONE: We have no cooperation  
8 agreement with any of the witnesses, Judge.

9 MR. HARRISON: And --

10 MR. VECCHIONE: There is Giglio material which  
11 I will turn over to counsel. I don't have it all  
12 together at this point. I can actually tell you  
13 what it is.

14 With respect to Angel Santos, and I will tell  
15 this to counsel now so he is aware of what the  
16 situation is, Angel Santos is in protective custody  
17 at this point because of threats that were made to  
18 him over the last several months by people he  
19 claims to be on behalf of Mr. Collins. He is being  
20 protected by the District Attorney's office. He is  
21 in our custody; has been provided with a hotel  
22 room, guarded by two detectives, and has been given  
23 food and food money during the course of his stay.  
24 In addition, the only other promise we made to  
25 Angel Santos is that following this case we will

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2 relocate him and his family and we will attempt to  
3 help him find a job. With respect to the other  
4 witnesses, there is no promise except as to Edwin  
5 Oliva and the promise as to Edwin Oliva is to send  
6 a letter to the Parole Board detailing his  
7 cooperation with the office and to attempt to  
8 relocate him when he is out of jail.

9 THE COURT: And he is not in the custody of  
10 the D.A.?

11 MR. VECCHIONE: He is not in the custody of  
12 the D.A. He is in the custody of the New York  
13 State Department of Corrections.

14 MR. HARRISON: Let me --

15 THE COURT: Now, the only thing I am  
16 suggesting to you, as far as Santos is concerned,  
17 in view of what Mr. Vecchione says, if he  
18 testifies, when he testifies, that in your cross  
19 examination you be very careful about this business  
20 about the D.A. keeping him in a hotel or giving him  
21 money for food, because I would not want this jury  
22 to get the impression, because if you say something  
23 to that effect, he will come back and say, well,  
24 the only reason I am there is because somebody on  
25 behalf of the defendant threatened me or blah blah

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2 blah, so I am sure you are smart enough and you are  
3 experienced enough not to open the door.

4 MR. HARRISON: I did not intend to go into  
5 that.

6 MR. VECCHIONE: Judge --

7 MR. HARRISON: I don't need to go --

8 THE COURT: You know, sometimes lawyers, they  
9 just go stumbling in, so to speak, and I like to  
10 tell them ahead of time that if you open the door,  
11 it's going to be swung right open by the D.A.

12 MR. VECCHIONE: Judge, I am sorry, I did  
13 neglect to tell you two things: One, with respect  
14 to Israel Rosado, who is another witness that we  
15 intend to call, he's been given a hotel room by the  
16 district attorney's office. He is not in our  
17 custody but he, as well, has received threats,  
18 threats to his home. He is the father-in-law of  
19 Mr. Santos, so we moved him to a hotel last night  
20 and we would be giving him food money with  
21 respect -- in the days that are coming up until he  
22 can be relocated. We intend to relocate him.  
23 Adrian Diaz, another individual, was brought by my  
24 office and, in fact, by myself back from Puerto  
25 Rico. He is not in custody of any kind. He is



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2 also at a hotel and he's been given food money for  
3 the period of time that he's been here as well as  
4 paying for his hotel. We intend to send him back  
5 to Puerto Rico after he has completed his  
6 testimony.

7 THE COURT: And your office paid the fare to  
8 and from New York City?

9 MR. VECCHIONE: To New York City. We will pay  
10 back to Puerto Rico when he completes his  
11 testimony.

12 THE COURT: That's what I am saying. You  
13 brought him here, you are paying the air fare and  
14 you are going to give him air fare to go back.

15 MR. VECCHIONE: Yes, sir.

16 THE COURT: Is that clear, sir? So now --

17 MR. HARRISON: It's clear, Your Honor.

18 THE COURT: -- you have the whole picture.

19 MR. HARRISON: The only thing that I am  
20 curious about, about this entire scenario, is with  
21 Mr. Oliva. Inasmuch as he is allegedly saying --

22 THE COURT: He was in on the planning.

23 MR. HARRISON: He was in on the planning. So,  
24 therefore, if he was in on the planning, he would  
25 thus have the possibility of being

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2 indicted -- hypothetical, on a felony murder.

3 THE COURT: Unless he abandoned it before the  
4 first step of the conspiracy was taken.

5 MR. VECCHIONE: Judge, he wasn't part of the  
6 planning. He overheard the planning.

7 THE COURT: Okay.

8 MR. HARRISON: Okay.

9 THE COURT: You can explore it any way you  
10 want.

11 MR. HARRISON: I understand that, Your Honor.  
12 May I approach one minute before we begin?

13 THE COURT: Yes, sure.

14 (Whereupon, a discussion was had off the  
15 record at the bench between all counsel and the  
16 Court.)

17 THE COURT: All right. Can we get the jurors  
18 in and bring the other ones down?

19 (Whereupon, the panel of prospective jurors  
20 entered the courtroom.)

21 (Whereupon, the jurors resumed their seats in  
22 the box.)

23 THE CLERK: Martha Smalls. Joan Dziedzic.  
24 Desere Dansby. Francis Epstein. Emma Gene.  
25 Lucille Consolmagno. John Gomez. Thomas

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2 Ponterella. Peter Igneri. Annami Joe Young. Anne  
3 Saverese. Mary Arroyo. Gloria Arist-Neequaye.  
4 Allison Antino.

5 Case on trial continued.

6 (Jury selection continued. Not recorded.)

7 \* \* \* \*

8 THE CLERK: Counsels, we have nine sworn  
9 jurors. The People have exhausted seven  
10 challenges, the defense eleven challenges. As to  
11 the entire panel, any challenges for cause,  
12 People?

13 THE COURT: Denied on number five.

14 MR. VECCHIONE: I am going to make it for the  
15 record.

16 What --

17 THE COURT: I know what he thinks. He's been  
18 before me.

19 THE CLERK: The entire panel.

20 MR. VECCHIONE: That's it for cause.

21 THE CLERK: Defense, cause?

22 MR. HARRISON: No.

23 THE CLERK: Peremptorily, first three,  
24 People?

25 MR. VECCHIONE: All challenged.

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2 THE CLERK: Next three, peremptorily, People?

3 MR. VECCHIONE: Five and six.

4 THE CLERK: Defense?

5 MR. HARRISON: No, I challenge four.

6 THE CLERK: Next three, peremptorily, People?

7 MR. VECCHIONE: All acceptable.

8 MR. HARRISON: Can you just give me one  
9 minute?

10 MR. VECCHIONE: All acceptable; seven, eight,  
11 nine are acceptable.

12 MR. HARRISON: I am just going to think out  
13 loud for a minute. Seven is acceptable to the  
14 defense.

15 Off the record.

16 (Whereupon, a discussion was had off the  
17 record between counsel and the Court.)

18 MR. HARRISON: I am challenging eight.

19 THE CLERK: That makes John Gomez juror number  
20 ten and Carroll Farrel juror number eleven.

21 As to Annami Young, peremptorily, People?

22 MR. VECCHIONE: Challenged.

23 THE CLERK: As to Anne Saverese, peremptorily,  
24 People?

25 MR. VECCHIONE: Acceptable.



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2 THE CLERK: Defense?

3 MR. HARRISON: Challenged.

4 THE CLERK: As to Mary Arroyo, peremptorily  
5 People?

6 MR. VECCHIONE: Acceptable.

7 THE CLERK: Defense?

8 MR. HARRISON: Challenged.

9 THE CLERK: As to Gloria Arist-Neequaye,  
10 peremptorily, People?

11 MR. VECCHIONE: Judge, give me a second?

12 (Short pause in the proceedings.)

13 MR. VECCHIONE: Challenged.

14 THE COURT: Fourteen.

15 MR. HARRISON: No challenge.

16 THE CLERK: As to Allison Antino,  
17 peremptorily, People?

18 MR. VECCHIONE: Acceptable.

19 THE CLERK: Defense?

20 MR. HARRISON: Challenged.

21 THE COURT: We have another round to go.

22 MR. VECCHIONE: One and two alternates,  
23 right?

24 THE COURT: How many challenges have they  
25 excercised?

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2 THE CLERK: Fourteen and sixteen.

3 THE COURT: How many in this round?

4 THE CLERK: The People have exhausted seven.

5 THE COURT: And the defense?

6 THE CLERK: Five.

7 THE COURT: This round?

8 THE CLERK: This round.

9 THE COURT: All right, let's go.

10 (Back in the courtroom.)

11 THE CLERK: The following two jurors whose  
12 name I call kindly remain seated. Everyone else  
13 has been challenged.

14 Remain seated, John Gomez and Carroll  
15 Farrel. Everyone else step out and return to  
16 Central Jury.

17 THE COURT: Are the remaining two jurors,  
18 satisfactory?

19 MR. VECCHIONE: Yes, Your Honor.

20 MR. HARRISON: Yes, Your Honor.

21 THE COURT: Jurors, kindly stand and raise  
22 your right hand.

23 Do you and each of you solemnly swear or  
24 affirm that you will try this action in a just and  
25 impartial manner and to the best of your judgment

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2 render a verdict in accordance with the law and the  
3 evidence, so help you God?

4 (Jurors respond in the affirmative.)

5 THE COURT: Will you show the jurors where the  
6 jury room is so they can leave their clothing? And  
7 bring them back down.

8 THE COURT OFFICER: You want me to bring the  
9 rest of the panel?

10 THE COURT: Yes.

11 (Whereupon, the sworn jurors exited the  
12 courtroom.)

13 THE CLERK: Jurors, once again, when you hear  
14 your name called, kindly answer "here" to the  
15 calling of your name. Take your belongings and  
16 take the seat that's assigned.

17 Take seat one, Joanne Farmer.

18 Take Seat number two, Annette Dymtzyński.

19 Take seat three, Ida Burrell.

20 Take seat four, Helene Mezzina.

21 THE JUROR: Can I approach the bench?

22 (Whereupon, there was a discussion off the  
23 record at the bench with the juror, counsel and the  
24 Court.)

25 THE COURT: Go back to Central Jury.

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2 Consent?

3 MR. VECCHIONE: Yes, Judge.

4 MR. HARRISON: Yes.

5 THE CLERK: Take seat four, Sharome Edwards  
6 Alleyne. That's Edwards, Alleyne.

7 THE CLERK: Do you have a relative working in  
8 this building?

9 THE JUROR: No.

10 THE CLERK: Take seat five, Martha McDonald.  
11 And take seat number six, Evelyn Ranza.

12 THE COURT: Good morning.

13 (Jury selection not recorded.)

14 \* \* \*

15 (Whereupon, the following transpired outside  
16 the presence and hearing of the prospective  
17 jurors.)

18 THE CLERK: Counselors, we have 11 sworn  
19 jurors.

20 MR. VECCHIONE: Mr. Harrison and I have  
21 discussed it, Judge. Juror number five, Miss  
22 McDonald, is acceptable to both sides as juror  
23 number 12.

24 THE COURT: That's agreeable?

25 MR. HARRISON: Yes.



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2 THE COURT: Juror number five, her name?

3 MR. VECCHIONE: We have--

4 THE CLERK: McDonald.

5 MR. VECCHIONE: Then we have agreed on juror  
6 number three, Miss Burrell, as alternate number  
7 one. And juror number one, Miss Farmer, is  
8 alternate number two.

9 THE COURT: Is that agreeable?

10 MR. HARRISON: That's agreeable and I  
11 just -- I don't want -- I want to make one thing  
12 for the record.

13 THE COURT: Yes?

14 MR. HARRISON: That as a defense lawyer's view  
15 or perception, that juror number five is a straight  
16 shooter. I feel comfortable with her. I feel she  
17 will call it as the law requires, just in case  
18 there is any issue as to --

19 THE COURT: It was one juror that was  
20 required. You already had exercised something  
21 like 16 challenges and you agreed with  
22 Mr. Vecchione that for the purpose of picking  
23 one juror, you didn't want to go beyond your twenty  
24 challenges.

25 MR. HARRISON: I didn't and I --

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2 THE COURT: You are satisfied with number  
3 five.

4 MR. HARRISON: Quite frankly, on both the  
5 defendant -- off the record.

6 (Whereupon, a discussion was had off the  
7 record between all counsel and the Court.)

8 THE COURT: As Mr. Vecchione agreed that we  
9 not go through the normal routine, and juror number  
10 five was selected as the 12th juror.

11 MR. VECCHIONE: Yes.

12 THE COURT: And that is the juror sitting in  
13 number five seat?

14 MR. VECCHIONE: Yes.

15 (Whereupon, the following transpired in the  
16 presence and hearing of the prospective jurors.)

17 THE CLERK: The following three jurors whose  
18 names I call, please remain seated. Remain seated,  
19 Martha McDonald, Ida Burrell and Joanne Farmer.  
20 The following jurors, return to Central Jury.

21 Jurors, can I ask you to kindly step out of  
22 your jury box and I will give you your assigned  
23 seats. Miss Burrell, you will be alternate number  
24 one, first seat on the side, and Miss Farmer, you  
25 will be alternate number two.

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2 THE COURT: The first seat there down below.

3 THE CLERK: And Miss Farmer, you will be  
4 sitting right next to her.

5 Take seat number one, Phyllis Kessler. You  
6 will be this jury's Foreperson. Juror number two,  
7 Anne Curatolo, take seat number two. David  
8 Morrero, juror number three. Patrick Monaghan,  
9 juror number four. And seat five, Cybil Hammil.  
10 Elizabeth Knafo, juror number six.

11 In the second row, seat number seven, Arthur  
12 Warshowski, Theresa Gablowski, Cynthia Bollo, John  
13 Gomez, Carroll Farrel, and Martha McDonald, you  
14 will take seat number 12.

15 Jurors, once again, can I ask you all to  
16 kindly stand and raise your right hand? Do you and  
17 each of you solemnly swear or affirm that you will  
18 try this action in a just and impartial manner and  
19 to the best of your judgment render a verdict in  
20 accordance with the law and the evidence, so help  
21 you God?

22 (Jurors respond in the affirmative.)

23 THE CLERK: Please be seated and give your  
24 attention to the Court at this time.

25 THE COURT: Miss Kessler and Ladies and

Preliminary Instructions

Gentlemen of the Jury: I am going to give you a little preview of what is going to happen at this trial. The law reads that the order of a jury trial in general is as follows: The jury must be selected and sworn. Then the Court must deliver preliminary instructions to the jury. That I am about to do. When I get through, the law provides that the People must deliver an opening address to you and after that the defendant may deliver an opening address to the jury. You will note the difference. The People "must" open. The defendant "may" open. That means that the assistant district attorney will stand before you and tell you what this case is all about. He will not merely tell you that this is a murder case. He will go into the counts of the indictment. He will tell you how he expects to prove the case, what witnesses he expects to call and what he expects the testimony of witnesses to be.

Now, listen very carefully to his opening, ladies and gentlemen, because a trial is sometimes like the picture on the box of a jigsaw puzzle. The pieces are in the box. The district attorney will then call witnesses to make the picture, but



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1 sometimes the witnesses may be called out of turn.  
2 Witnesses that may be testifying, they will be  
3 excused temporarily so another witness can testify  
4 and go about his business, and then the witness who  
5 was on the stand will be recalled. However,  
6 whatever the district attorneys says is not  
7 evidence, but by listening to his opening  
8 statement, you will know what the district attorney  
9 intends to prove insofar as this trial is  
10 concerned; simply the picture that's on the box.  
11 And then the witnesses will come in and he will  
12 attempt to fill out that picture with the testimony  
13 of those witnesses.  
14

15 Now, as I said, the district attorney must  
16 open and the defendant may open. That means that  
17 the defense counsel has a right to waive his  
18 opening. If he should do that, you are not to draw  
19 any inference from that at all. You are not to try  
20 to second-guess defense counsel. He may say to  
21 himself: I have heard the district attorney's  
22 opening and I can't believe that he is going to  
23 prove what he says he is going to prove, so I am  
24 not going to open. If he does that, you are not to  
25 draw any inference unfavorable to the defendant.

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2 After the defendant has opened or waived his  
3 opening, the law provides that the People must  
4 offer proof in support of the indictment. That  
5 means that the district attorney will call the  
6 witnesses. He will ask each witness questions.  
7 When he gets through, defense counsel will  
8 cross-examine those witnesses. Then, perhaps  
9 there may be some redirect examination and perhaps  
10 some recross examination. Now, you must not only  
11 listen very carefully, but you must watch the  
12 witnesses as they testify on direct examination  
13 and on cross examination. Ask yourself: Are  
14 they hesitant? Are they evasive? Do they answer  
15 forthright? Because you have to determine the  
16 credibility of the witnesses.

17 Now, one of your aids in determining their  
18 credibility is by observing their demeanor on the  
19 stand, so your duty is not only to listen but very  
20 carefully to watch. After the People have offered  
21 evidence in support of the indictment, the law  
22 provides that the defendant may offer evidence in  
23 his defense. Again, it's "may". He may decide  
24 to rest after the People have rested. If that  
25 should be done, you are not to draw any inference

Preliminary Instructions

unfavorable to the defendant.

The law provides in the event there is evidence offered by the defense, the People might offer evidence in rebuttal of the defense evidence. The defendant may then offer evidence in rebuttal of the People's rebuttal and so forth and so on.

The law further provides that at the conclusion of the evidence, the defendant may deliver a summation to the jury and after that, the People may then deliver a summation to the jury. You will note it's "may" and not "must," so that both of the sides or one side may waive a summation. However, I have been lawyer and a judge for a long time and I have heard hundreds of cases. I have never seen a lawyer waive a summation. That is the time they wish to get up before you, go over all the evidence with you, recall what the witnesses testified to. They will urge you to draw certain inferences in that testimony and ultimately to decide the case in favor of their respective client. So I doubt that either side will waive a summation.

After summation, the Court must then deliver

## Preliminary Instructions

a charge to the jury. I will tell you what the law is insofar as this case is concerned. I am not going to give you a course in criminal law or on evidence. I am going to tell you what the law is as it relates to this case. That law as I have indicated to you, you must take from me whether you like the law or dislike it and apply it to the facts as you find the facts to be. After I charge you on the law, you must then retire to deliberate and, if possible, render a verdict.

Now, I am the Judge of the law. You are the sole judges of the facts. Being a judge of law means that my duty is to preside over this trial to see that it is conducted in a fair and impartial manner, which means I will be called upon to rule on objections and on motions. I may grant some and deny others. The law tells me how a trial is to be conducted and what evidence is admissible, what evidence is not admissible. As a matter of law, I am vested with a certain amount of discretion in some of my rulings. I have to decide whether the evidence will be relevant and so forth. It is my job to keep the case within bounds and